

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

**601 NEW JERSEY AVENUE, NW**

**SUITE 9500**

**WASHINGTON, DC 20001**

May 4, 2005

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

SIDNEY COAL COMPANY, INC.

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Docket No. KENT 2005-177

A.C. No. 15-17651-18928

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, Commissioners

**ORDER**

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”). On March 14, 2005, the Commission received from Sidney Coal Company, Inc. (“Sidney Coal”) a letter requesting that the Commission reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

On February 13, 2004, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a proposed penalty assessment (A.C. No. 15-17651-18928) to Sidney Coal’s Mine Number 1 in Pike, Kentucky, for several citations and orders, including Citation No. 7404726. In its letter, Sidney Coal states that it wished to contest Citation No. 7404726 and noted as much on the proposed assessment. Attached to its letter is a copy of the proposed assessment with a check mark appearing next to Citation No. 7404726 in the “Check for Contest” column. Sidney Coal asserts, however, that it now understands that its contest was never received by MSHA. The Secretary states that she does not oppose Sidney Coal’s request for relief.

We have held that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final section 105(a) orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of inadvertence or mistake. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Having reviewed Sidney Coal’s letter, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Sidney Coal’s failure to timely contest the penalty proposal and whether relief from the final order should be granted. If it is determined that such relief is appropriate, this case shall proceed pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

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